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## Appeal Decisions

Site visit made on 26 April 2019

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 May 2019

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**Land south of Home Farm, Old School Lane, Lighthorne, Wellesbourne, Warwickshire CV35 OAU**

**Appeals by Projectpart Homes Limited**

**Appeal A Ref: APP/J3720/C/18/3206999**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The enforcement notice was issued on 11 June 2018.
- The breach of planning control as alleged in the notice is the material change of use of agricultural land to garden land which has been facilitated through engineering operations to re-level the land and the erection of a 1.8m high close boarded fence to enclose the land.
- The requirements of the notice are:
  - a) Remove the fence from the land.
  - b) Reinststate the land levels to that identified as 'Original Ground Level' shown on drawing 350Rev.C submitted with planning application 18/00549/FUL.
  - c) Only use the land for agricultural purposes.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.**

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**Appeal B Ref: APP/J3720/W/18/3215187**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The application ref 18/00253/FUL dated 10 July 2018 was refused by notice dated 20 September 2018.
- The development proposed is change of use of a ten metre strip of land to become part of gardens to approved development (plots 1-4).

**Summary of Decision: The appeal is dismissed.**

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### **The Appeals Site, The Background and The Enforcement Notice**

1. The appeals site lies on the south-eastern edge of Lighthorne where it borders onto the boundary of the Lighthorne Conservation Area. It is immediately at the rear of 4 house plots (plots 1-4), part of a scheme of 5 detached houses for

- which planning permission was granted in 2017<sup>1</sup>. The houses have been built, but at the time of my site inspection, they were not occupied.
2. The site in question is an elongated rectangular shaped strip about 60m long and some 10m deep. Its southern edge, where the site borders onto a belt of woodland, is some 3.5m to 4m higher than the ground level of the houses and their immediate surrounds, and is marked by a row of fence posts. The main body of the fence referred to in the notice has been removed. Most of the land is occupied by mounds of unconsolidated spoil, presumably the product of excavation work having been undertaken.
  3. Given the state of most of the land, and the apparent absence of any cultivation here, together with the lack of occupancy of the 4 related dwellings, I am concerned that the allegation set out in the enforcement notice does not reflect properly what has occurred here. Mindful of the description of the proposal that is the subject of Appeal B, it is reasonable to assume that the works that have occurred are a precursor to the change of use of the land to gardens, but as I perceived it, the actual change has not come about yet. In other words, the allegation that there has been a material change of use is incorrect.
  4. It is incumbent upon me to get the allegation right and in this instance my view is that the breach of planning control should focus on the works that have been undertaken. Accordingly, therefore, I consider the main thrust of the breach ought more appropriately to be framed as 'the carrying out of engineering operations to facilitate the use of the land as gardens and the erection of a 1.8m high close boarded fence'. As this would essentially be relabelling the notice, and would not extend its scope, I am satisfied that this is an instance where I can exercise my power to correct the notice without causing injustice to the parties.
  5. The appellant also refers to inaccuracies in the enforcement notice. Just what these are claimed to be have not been elaborated upon, but I have been requested to consider altering the notice to reflect the section 78 appeal proposal. It may be that the correction to the allegation referred to addresses the appellant's concern. Nevertheless, as the deemed application and the appeal on ground (a) derive from the matters alleged in the notice, (subject to it being corrected as described above), the decision on Appeal A will be based upon this.

## **Appeal A – Appeal on Ground (a), the Deemed Application and Section 78 Appeal B**

### **Reasons**

6. The Council indicate that the second reason for the refusal of planning permission, which relates to surface water drainage, is not to be defended; a suggested condition covering this matter is put forward instead. In the light of this, I consider the main issue is whether the character and appearance of the area would be adversely affected.
7. Planning policies for the area are contained in the Council's Core Strategy (CS). Policy AS.10 seeks, amongst other things, to ensure that proposals minimise the impact on the local landscape and communities. In a similar vein, Policy

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<sup>1</sup> Planning application reference 17/00654/FUL.

- CS.9 requires proposals to be sensitive to the setting landscape character and topography of the locality. Policy CS.5 sets out a series of measures aimed at maintaining the landscape quality of the District and Policy CS.8 states that the area's historic environment will be protected and enhanced.
8. The intention of the scheme is to provide additional garden areas for the 4 house plots. The land would be graded and landscaped incorporating native species, and instead of the close boarded fence referred to in the enforcement notice, the section 78 appeal proposal indicates that there would be a post and wire fence on the site's southern boundary.
  9. The land in the locality rises upwards in a southerly direction away from Old School Lane. It is apparent from both what I saw and what is indicated on the submitted plans that the excavation work involved in the creation of the additional garden area will not only be substantial, but, a direct consequence of the work undertaken to date has been the removal of a stretch of what is said to be an ancient hedgerow. Despite the submissions made by the local Parish Council in this respect, I am mindful that the appellant has queried the status of the former hedgerow.
  10. Even if the appellant's scepticism is correct, besides marking the boundary of the conservation area, the hedge would have been a distinctive physical feature that helped to define the extent of the built-up area of this part of Lighthorne. Indeed, the draft built boundary for the village contained in the Council's emerging Site Allocations Plan (SAP) coincides with the boundary of the conservation area at this point. Having been advised that the SAP has been the subject of a 'further focused consultation', I attach weight to its provisions commensurate with the stage it has reached in its progress towards adoption.
  11. The appellant refers to the site's relationship with the new houses, but as this only appears to have come about as a result of the unauthorised works, I am not inclined to attach much weight to this point. I acknowledge that there is nothing to indicate that the appeals site was previously in productive agricultural use. Be that as it may, prior to the excavations and the erection of the solid fence, the appeals site would have been an integral part of the countryside on the south-eastern fringe of Lighthorne. And, in all probability, the former hedgerow would have important facet of the locality, a significant feature that clearly marked the boundary between the built confines of this part of the village and the countryside beyond.
  12. It may well be that the provision of an increased amount of usable garden area would make the 4 approved houses more attractive places to live in, but I am unable to concur with the appellant's view that the development is more related to the village form. Irrespective of the marked change in levels and the profile of the land, its use as domestic gardens would significantly alter the character of the land to the extent that it would constitute a serious incursion into the countryside on the edge of Lighthorne. The effect has been compounded by the removal of the hedgerow, the loss of which has adversely affected the visual quality of the setting of the conservation area. Despite the presence of the woodland to the south of the site, I see this as a further disadvantage which adds to my concern. Due largely to the presence of the houses, the impact of the scheme would be fairly localised, but I do not consider relative inconspicuousness is a good reason for permitting the development in this location.

13. The planting indicated on the Appeal B application plans would help to ameliorate the impact of the proposal to some extent. But, while this is something that could be covered by condition, neither this nor any other condition, including those suggested by the Council, would be sufficient to overcome the harm I have identified. Insofar as the conservation area is concerned, the harm would be less than substantial, but I am unable to identify any public benefit likely to arise from the scheme.
14. In the light of the foregoing, my overall conclusion is that the development in question would have an unacceptably adverse effect upon the character and appearance of the area. As such, it would be contrary to both the CS and The National Planning Policy Framework which advises that decisions should recognise the intrinsic character of the countryside.
15. For the reasons given the appeal on ground (a) and the section 78 appeal both fail. Planning permission will not be granted therefore.

#### **Appeal A – Appeal on Ground (f)**

16. Although most of the fence in question has been removed, this is merely an indicator that requirement a) has largely been complied with. As I see it, the fence was part and parcel of the scheme enforced against and requiring its removal represented a reasonable response to the alleged breach of planning control. I do not find this measure excessive. The same view applies to requirement b), albeit the process of complying with it is likely to result in more activity on the site. A good deal of the rest of the appellant's comments in this respect are a reiteration of the planning merits of the scheme, something that I have already addressed in the preceding section.
17. I do, however, share the appellant's concern about requirement c). Notwithstanding the question of whether the land was ever in active agricultural use, the limitation indicated is effectively a command, as opposed to a remedy, and as such exceeds what is reasonably necessary in order to remedy the breach. I shall delete it. To this extent therefore, the appeal on ground (f) succeeds.

#### **Appeal A – Appeal on Ground (g)**

18. Consequent upon the deletion of requirement c) referred to in the preceding paragraph, compliance period c) no longer serves any useful purpose. I shall therefore delete it.
19. In response to the appellant's claim that the compliance period for requirement b) should be extended to 6 months to allow time for arrangements to be made to carry out the requisite works, the Council express a willingness for the period to be extended accordingly. I find the Council's concession a more reasonable approach in the circumstances, and I shall vary the notice accordingly. The appeal on ground (g) therefore succeeds to this extent.

#### **Other Matters**

20. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

## **Formal Decisions**

### **Section 174 Appeal A Ref: APP/J3720/C/18/3206999**

21. I direct that the enforcement notice be:

A. Corrected in section 3 by the deletion of the allegation and its substitution by "Without planning permission the carrying out of engineering operations to facilitate the use of the land as gardens and the erection of a 1.8m high close boarded fence (in the approximate position marked A-B on the Plan)."

B. Varied:

- a. In section 5 by the deletion of requirement c).
- b. In section 6 b) by the deletion of "4 months" and its substitution by "6 months.
- c. In section 6 by the deletion of the time for compliance c).

22. Subject to the correction and variations, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Section 78 Appeal B Ref: APP/J3720/W/18/3215187**

23. I dismiss the appeal.

*D H Brier*

Inspector